

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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|--|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | |
| JUAN CARLOS GONZALEZ, |) | |
| |) | CASE NO. BK15-41046 |
| Debtor(s). |) | |
| <u>ACUITY, a mutual insurance company,</u> |) | A15-4038 |
| |) | |
| Plaintiff(s), |) | 4:15CV3029 |
| |) | |
| vs. |) | CHAPTER 7 |
| |) | |
| JUAN C. GONZALEZ, d/b/a UNITED |) | |
| DRYWALL; UNITED DRYWALL, INC.; and |) | |
| JUAN C. GONZALEZ, individually, |) | |
| |) | |
| Defendant(s). |) | |

REPORT and RECOMMENDATION

This case was transferred from the district court because a party is in a bankruptcy case.

Acuity provided workers' compensation and business liability insurance to the debtor and his business. On March 10, 2015, it filed this lawsuit in the United States District Court for the District of Nebraska alleging breach of contract, successor liability, and fraud to recover nearly \$100,000 it claims to be owed in additional premiums. On July 3, 2015, the debtor filed a Chapter 7 bankruptcy petition, which caused the district court to refer the matter to this court to determine the scope of the automatic stay with regard to each defendant.

The bankruptcy petition was filed as to Juan Carlos Gonzalez individually and doing business as United Drywall. As the district court noted, simply using a business name does not create a legal entity separate and distinct from the person operating the business. For that reason, the automatic stay of 11 U.S.C. § 362 that went into effect upon the filing of the bankruptcy petition protects the debtor and United Drywall from this litigation, unless and until a party requests and this court grants relief from the stay. However, the corporate defendant is a separate legal entity, and it has not filed a bankruptcy petition. Therefore, it is not protected by the automatic stay and the litigation against it may continue.

Accordingly, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding and stay all matters concerning the debtor individually and doing business as United Drywall while moving forward with the case as to United Drywall, Inc.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local

court rules.

DATED: July 23, 2015.

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino
Chief Judge

Notice given by the Court to:
Christopher D. Curzon
Craig F. Martin
Michael L. Storey
Samuel J. Turco, Jr.
U.S. Trustee